vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.666 OF 2006

Sampatrao Anna Chavan & Anr. ... Appellants

V/s.

Bhanudas Hari Patil & Ors. ... Respondents

Mr.N.V. Bandiwadekar for Appellants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 10, 2007**

P.C.:

. The appellants are the defendants in the original suit filed by the plaintiffs for possession of the encroached portion Gat No.520 in Village Nagrale. Initially, the appellants had filed the counter claim pleading that the plaintiffs had encroached their land to the extent of 9 gunthas. Thereafter, the counter claim was amended and the defendants claimed that the plaintiffs had encroached on his land to the extent of 24 gunthas. Both the Courts have dismissed the suit as well as the counter claim. Both the Courts have taken the view that the counter claim of the appellants is barred by limitation and have dismissed the same. The appellate Court has taken the view that the limitation would run from the date the cause of action for amendment arose after filing the written statement by relying on the judgment of this court in *Ganu Buradkar*

v/s. Manik Kisna Buradkar, **2003 Vol. III Mh.L.J.218**. In my view, there is no error committed by the Courts below.

2. It is submitted on behalf of the appellant that both the Courts should have allowed the initial counter claim which was filed in respect of the encroachment of 9 gunthas. Reliance is placed on the judgment of the Orissa Court in the case of *Managobinda & Ors. v/s. Brajabandu Misra,* **AIR 1986 ORISSA 281**. In my view, this judgment has no application since the counter claim has been amended and the prayers sought in the counter claim are not in the alternative.

3. Appeal dismissed.